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No. 78-1784

In the Supreme Court of the United States

OCTOBER TERM, 1978

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A25-A32) is reported at 594 F. 2d 653. The order and opinion of the district court (Pet. App. A20-A25) is reported at 455 F. Supp. 434.

JURISDICTION

The judgment of the court of appeals was entered on February 28, 1979. The petition for a writ of certiorari was filed on May 29, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court violated the automatic stay provisions of Bankruptcy Rule 12-43 by enjoining petitioners from interfering with a court-appointed receiver's possession or control of certain properties.

STATEMENT

The United States filed this action in the United States District Court for the Eastern District of Missouri to protect the interests of the Secretary of Housing and Urban Development as mortgagee of the Mansion House Center.[1] The complaint sought the appointment of a receiver for the project and the recovery of project funds expended in violation of agreements between HUD and the mortgagors.[2] On September 8, 1976, the district court appointed respondent Rimmel as receiver to assume control and manage the project. *United States* v. *Mansion House Center North Redevelopment Co.*, 419 F. Supp. 85 (E.D. Mo. 1976).

In the fall of 1976, as a result of the resignation of Maurice B. Frank as individual general partner of the mortgagor partnerships, a dispute arose between two groups, each claiming to control the partnerships owning

[1]The Mansion House Center is an apartment and motor hotel complex located in St. Louis. It consists of three separately owned towers and was constructed through loans insured by HUD pursuant to the National Housing Act, 12 U.S.C. 1701 *et seq.*

[2]Judgments totalling $1,149,081 have been entered against Maurice B. Frank, the past individual general partner of mortgagors, and his wholly-owned corporations, for diversions of project funds in violation of the mortgage agreements between HUD and the mortgagors. *United States* v. *Mansion House Center*, 463 F. Supp. 595 (E.D. Mo. 1978); *United States* v. *Mansion House Center North Redevelopment Co.*, 447 F. Supp. 951 (E.D. Mo.), aff'd, 587 F. 2d 924 (8th Cir. 1978).

the Mansion House Center.[3] One group, petitioners herein, is controlled by Frank; the competing group is controlled by representatives of limited partners.

In December 1976 and January 1977, petitioners filed petitions (Pet. App. A4-A6) for an arrangement under Chapter XII of the Bankruptcy Act, 11 U.S.C. 801 *et seq.*, in the United States District Court for the Middle District of Florida and demanded that the receiver relinquish to them control of the project. In response to the receiver's request for instructions, the Missouri district court determined, after a three-day hearing in which petitioners participated, that the receiver was not in possession of any assets belonging to petitioners and that he therefore was not required to respond to the turn-over demand. *United States* v. *Mansion House Center North Redevelopment Co.*, 426 F. Supp. 479 (E.D. Mo. 1977), petition for mandamus denied *sub nom. Frank* v. *Nangle*, No. 77-1165 (8th Cir. Mar. 2, 1977). In a related proceeding, the Missouri district court also determined that the Chapter XII petitions had been filed in bad faith and violated the non-interference provisions of the order appointing the receiver. *United States* v. *Mansion House Center*, No. 76-20C(3) (E.D. Mo. Mar. 10, 1977). The Chapter XII proceedings were transferred to the Eastern District of Missouri and later dismissed.[4]

[3]The partnerships, Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company, and Mansion House Center South Redevelopment Company, own respectively the North Tower, Center Tower and South Tower of the Mansion House complex.

[4]Faced with conflicting claims to the ownership of the project, the government amended its complaint to seek a judicial determination of who the owners were. Petitioners' motion for summary judgment on the ownership question was denied; the motion for summary judgment of the group controlled by representatives of the limited partners was granted. *United States* v. *Mansion House Center*, 463 F. Supp. 591 (E.D. Mo. 1978), appeal docketed, No. 79-1169 (8th Cir. Feb. 26, 1979).

Petitioners again filed Chapter XII petitions, this time in the United States District Court for the Northern District of Illinois (Pet. App. A7-A18). The receiver again sought instructions from the district court in Missouri, which once more informed the receiver (Pet. App. A19-A25) that he was not in possession of any assets belonging to petitioners and that he was not bound by the stay provisions of Bankruptcy Rule 12-43, 11 U.S.C. App., at 1512.[5] In addition, the court ordered petitioners to show cause why they should not be restrained from proceeding with their Chapter XII petitions (Pet. App. A20).

Petitioners appeared at the hearing and participated in the examination of witnesses and introduction of evidence. On August 17, 1978, the district court issued the order that is the subject of this petition. The order enjoins petitioners from: (1) filing any additional bankruptcy petitions claiming ownership of the Mansion House Center; (2) claiming ownership of the project in the pending bankruptcy proceedings; and (3) attempting by any means to cause the receiver to surrender possession of the project without specific authorization from the Missouri district court (Pet. App. A20-A21). In its accompanying memorandum, the court stated (Pet. App. A25):

> The filing of these petitioners has threatened the Court's ability to proceed herein. It has violated orders of this Court and has undermined the very reason for those orders, the protection of the interests of the parties involved in this litigation.

The court of appeals affirmed (Pet. App. A25-A32). It described petitioners' conduct in filing the second set of Chapter XII petitions as "almost contumacious" (*id.* at A32) and held that the district court and the receiver were not bound by the stay provisions under Chapter XII of the Bankruptcy Act because the Mansion House Center did not belong to petitioners and hence was not subject to the jurisdiction of the bankruptcy court in Illinois (*id.* at A31).

[5]Rule 12-43(a) (Pet. App. A32) provides that a petition for relief under Chapter XII shall stay any other proceeding against the debtor.

ARGUMENT

The court of appeals' decision is correct; moreover, the issue that petitioners present is entirely factbound and does not warrant this Court's review.

Petitioners contend (Pet. 6-7) that the court of appeals erred in relying on the district court's decision dismissing the Chapter XII petitions originally filed in the Middle District of Florida for the proposition that petitioners had no interest in the partnership owning Mansion House Center South. Petitioners urge that the district court's decision related only to the interests of the partnership of which Maurice Frank was a general partner and that the Chapter XII petitions filed in the Northern District of Illinois were not filed by Frank individually. Therefore, petitioners argue, the stay provisions of Bankruptcy Rule 12-43 should have been given effect.

This contention is without merit. The district court's order dismissing the Florida petitions stated that "the partnership on whose behalf defendant Frank filed the Chapter XII petition is not the partnership whose assets the receiver possesses." 426 F. Supp. at 483. The petitions filed in Illinois were filed on behalf of the same partnerships, and the district court's ruling cited by the court of appeals is therefore fully applicable.

In any event, the district court's conclusion that petitioners lack any proprietary interest in the properties held by the receiver is amply supported by the record

below—a proposition petitioners do not contest. See Pet. App. A24 and note 4, *supra*. Once the validity of the determination regarding ownership is established, it is clear that the lower court applied the correct legal principles. A district court possesses jurisdiction to determine its own jurisdiction (see *Bell* v. *Hood*, 327 U.S. 678, 682 (1946)), and, where, as here, the debtor has no interest in the property at issue, the court is not subject to the stay provisions of Bankruptcy Rule 12-43. See, *e.g.*, *Dakota Livestock Co.* v. *Keim*, 552 F. 2d 1302, 1305 (8th Cir. 1977); *Mid-Jersey Nat'l Bank* v. *Fidelity-Mortgage Investors*, 518 F. 2d 640, 644 (3d Cir. 1975); *Amoco Pipeline Co.* v. *Admiral Crude Oil Corp.*, 490 F. 2d 114, 116 (10th Cir. 1974); *In re Whitney*, 113 F. 2d 426, 428 (2d Cir. 1940); *NYTCO Services, Inc.* v. *Hurley's Grain Elevator Co.*, 422 F. Supp. 114, 120 (W.D. Tenn. 1976).[6]

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[6]Petitioners rely chiefly upon *Fidelity Mortgage Investors* v. *Camelia Builders, Inc.*, 550 F. 2d 47 (2d Cir. 1976), cert. denied, 429 U.S. 1093 (1977). But in that case, the Second Circuit expressly distinguished (550 F. 2d at 54) *Mid-Jersey Nat'l Bank* v. *Fidelity-Mortgage Investors*, 518 F. 2d 640 (3d Cir. 1975), the decision cited by the Eighth Circuit as authority for its decision here (Pet. App. A31). In *Mid-Jersey Nat'l Bank*, as here, the debtor had no interest in the property at issue, thereby depriving the bankruptcy court of jurisdiction and rendering inapplicable the stay provisions of Bankruptcy Rule 12-43.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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